PRIVY COUNCIL REPORT

TAY KOH YAT BUS CO. LTD. v. CHUA CHONG CHER & ORS.

[P.C. (Lord Wilberforce, Viscount Dilhorne, Lord Pearson, Lord Cross of Chelsea and Lord Salmon) March 28, 1972]

[Privy Council Appeals Nos. 24 and 25 of 1970]

Practice and Procedure — Question of fact — Demeanour of witnesses — Power of appellate court to overrule trial judge.

Negligence — Road accident.

This was an appeal against the decision of the Court of Appeal of Singapore ([1970] 2 M.L.J. 27).*

Two actions were brought in the High Court of Singapore in respect of a certain road accident. In the first action the plaintiff was Mr. Oon Long Kiang, the driver of the Hock Lee Bus and the defendants were (1) the motor-cyclist and (2) and Tay Koh Yat Bus Company. In the second action the plaintiff was a lady who had been a passenger in the Hock Lee Bus and the defendants were (1) the Hock Lee Bus Company (2) the Tay Koh Yat Bus Company and (3) the motor-cyclist. It was arranged that there should be a hearing of the second action only, and that the decision in that action should govern the decision in the first action. Similar arrangements applied to the appeals in the two actions in the Federal Court of Malaysia* and now applies to the present appeals.

The disputed question was whether the accident was due to negligence on the part of the motor-cyclist/respondent as the learned trial judge held, or to negligence on the part of the driver of the Tay Koh Yat bus as was held by the Court of Appeal. The issue in the appeals to the Privy Council was whether the Court of Appeal was justified in reversing the decision of the learned trial judge on a matter of fact when his finding was based mainly on his acceptance of the evidence of one witness in preference to the evidence of another witness.

Held, allowing the appeal: the findings of the learned trial judge were indisputedly based on demeanour, though no doubt the effect of the evidence generally was taken into account. When findings of primary fact by the learned trial judge had been based on his view as to the comparative credibility of opposing witnesses and that view has been reached by observation of the witnesses as they gave their evidence, an appellate tribunal needs very strong grounds to justify a reversal of such findings.

Cases referred to:-

(1) *Hontestroom Case* [1927] A.C. 37 at p. 40.

(2) *Powell and Wife* v. *Streatham Manor Nursing Home* [1935] A.C. 243 at pp. 264 and 265.

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J. Fox Andrews Q.C. and *Michael Hutchison* for the appellants.

Ian Bailieu and *Denis Murphy* for the respondents.

Lord Pearson (delivering the judgment of the Board): On 9th March 1966 in River Valley Road, Singapore, there was a road accident in which two buses and a motor-cycle were involved. One bus belonged to the Tay Koh Yat Bus Company Limited, the appellant in these appeals. That company will be called "the Tay company" and the bus will be called "the Tay bus" The driver of this bus was Mr. Ramaswamy. After stopping at a bus stop he was driving the Tay bus down a slight slope along the River Valley Road. On the same road, and initially moving in the same direction as the Tay bus and in front of it, having overtaken it at the bus stop, was the motor-cyclist, Chua Chong Cher, the respondent in these appeals. He will be called the "motor-cyclist". Coming in the opposite direction and keeping to its proper side of the road was the other bus, which belonged to the Hock Lee Amalgamated Bus Company Ltd. That company will be called "the Hock Lee company" and the bus will be called "the Hock Lee bus". The driver of this bus was Mr. Oon Long Kiang.

Two actions were brought in the High Court of Singapore in respect of the accident. In the first action the plaintiff was Mr. Oon Long Kiang, the driver of the Hock Lee bus, and the defendants were (1) the motor-cyclist and (2) the Tay company. In the second action the plaintiff was a lady who had been a passenger in the Hock Lee bus, and the defendants were (1) the Hock Lee company. (2) the Tay company and (3) the motor-cyclist. It was arranged that there should be a hearing of the second action only, and that the decision in that action should govern the decision in the first action. The arrangement applied also to the appeals in the two actions to the Federal Court of Malaysia and now applies to the present appeals.

It is not now suggested that the driver of the Hock Lee bus was in any way to blame for the accident. The disputed question is whether the accident was due to negligence on the part of the motor-cyclist, as the trial judge held, or to negligence on the part of the driver of the Tay bus, as the Federal Court of Malaysia held. The issue in the appeal is whether the Federal Court was justified in reversing the decision of the trial judge on a matter of fact, when his finding was based mainly on his acceptance of the evidence of one witness in preference to the evidence of another witness. There is however a good deal of undisputed evidence, which it is convenient to deal with first.

It is common ground that the motor-cyclist slowed down and stopped in the middle of the River Valley Road, intending to turn to his offside into a side road called Leonie Hill Road but having to wait for oncoming traffic to pass. There is a dispute as to whether he remained stationary in that position or started to move towards his nearside in front of the Tay bus. It is clear, for reasons which will be stated, that the Tay bus was travelling on its nearside but swerved abruptly to its offside. Some part of it, not identified but presumably the nearside front corner or some part of the nearside, struck a blow on the back of the motor-cycle, damaging the rim of the back wheel and the nearside portion of the rear number plate. The front of the Tay bus went over the centre of the road on to its offside. The driver started to pull back to his nearside, but there was no time and the Tay bus collided, front to front but at an angle, with the Hock Lee bus.

There was an agreed plan, prepared by the police, showing the positions of the vehicles after the accident, and there were agreed photographs of the vehicles in those positions. There was also a plan, submitted by

* The appeal was heard by the Federal Court. However, the grounds of decision were given by the Court of Appeal which succeeded the Federal Court in Singapore by virtue of the Supreme Court of Judicature Act, 1969 which came into force on January 9, 1970.

the motor-cyclist's counsel and included in the record, showing on squared paper the two buses in their positions after the accident, and this is useful as showing certain distances and the angle of the Tay bus in relation to the direction of the road.

The width of the River Valley Road was 30ft. 2in. and the width of the Tay bus was 7ft. 2in. In the position of the Tay bus after the accident, the distances of its corners from the nearside kerb were — front nearside 18ft. 3in., front offside about 24ft. 6in., rear nearside 7ft. 2in., rear offside about 13ft. 5in. The bus was turned to its offside at an angle of about 27° to the direction of the road. Its front wheels had been turned back towards the nearside. To reach that final position it must have come from a position closer to its nearside, and it could not have been travelling in the middle of the road. It is reasonable to infer that it had been travelling well on its nearside before it swerved abruptly towards its offside. This inference accords with the evidence of the driver of the Hock Lee bus as well as that of the driver of the Tay bus, and there was an express finding of the learned trial judge to the same effect.

The motor-cycle came to rest approximately in line with the middle of the Tay bus. The motor-cycle was turned over on its offside with the wheels towards the Tay bus and the handlebars and seat towards the nearside kerb, and it was about 3ft. 10in. from the nearside kerb. It was facing in the direction from which it and the Tay bus had come. Therefore it had somehow been turned round in the accident and also had moved from the centre of the road towards its nearside.

The questions posed by the undisputed evidence are (1) Why did the driver of the Tay bus, who had been travelling well on his nearside, make his abrupt swerve to the offside at the grave risk of a collision with some oncoming vehicle (which in fact occurred)? (2) How did the motor-cycle come to be where it was after the accident?

Mr. Ramaswamy, the driver of the Tay bus, gave evidence. In the course of it he said, as it is recorded in the court notes of evidence:

"As I was approaching Leonie Hill Road junction I was involved in traffic accident.

I had just picked up passengers.

There were plenty of vehicles going ahead of me.

I was behind a lorry.

I saw a motor-cycle in centre of the road waiting (stationary) to turn right into Leonie Hill Road. It was 30 or 40 feet from me.

My speed was then between 15 to 20 m.p.h.

I was 3/4 feet from edge of road.

Lorry was in front of me.

After lorry had passed the motor-cyclist the motor-cyclist suddenly swerved left across my path.

Lorry overtook motor-cyclist on left side of motor-cyclist.

When motor-cyclist suddenly swerved to its left it was 7 to 10 feet of me on a slope. (sic)

When motor-cyclist swerved left I swerved right to avoid a collision. I don't know if I collided with motor-cyclist.

I swerved violently to right and on seeing vehicles approaching from front I again swerved left. There was a collision with Hock Lee bus in front.

I applied my brakes and then swerved right.

If I had not swerved right I do not know if motor-cyclist would be alive if my bus went over him."

In a later passage he said —

"Lorry was about 20 ft. in front of me.

I could see road ahead of lorry as well.

Motor-cycle was 10 to 20 feet ahead of lorry at that stage. Lorry was smaller than the bus.

It did not impede my vision."

Finally he was questioned by the court and gave answers thus —

"Q. You made no mention of lorry in your report AB4? A. I did. I don't know English. My Malay is not so good. I first noticed the Hock Lee bus when it was 10 to 50 feet from scene of collision — 40 or 50 feet.

Motor-cycle was then stationary in centre of road about 10 or 20 feet from me.

The lorry was in front of me about 15 or 20 ft.

Speed of Hock Lee bus when I saw it was 10 or 20 or 30 m.p.h. Could be 10 or 20 m.p.h."

The report AB4 was a report to the police, which was a plaintiff's exhibit and is in the record and was presumably in evidence. In that report Mr. Ramaswamy had said that the motor-cycle went towards the left and he swerved to the right to avoid it.

Mr. Ramaswamy's estimates of speeds and distances certainly look unreliable, but that is a common failing of witnesses in road accident cases, and it would be for the trial judge to decide, having regard to the witness's demeanour and the other evidence in the case, whether he was an honest witness and whether his evidence on matters other than speeds and distances could be accepted.

Mr. Cher, the motor-cyclist, gave evidence to the effect that on approaching Leonie Hill Road he slowed down, gave with his right hand the signal for stopping and stopped, and that, when he heard a loud sound behind him and turned his head round to see, the Tay bus collided into him and he fell down on the crown of the road and afterwards got up. He said that he had a provisional driving licence taken out less than two months before, and that the motor-cycle was new. He said that before he was hit he did not see any lorry in the vicinity — he did not see any vehicle passing him on his left. Then in the court notes of evidence there is this sentence "I saw Hock Lee bus coming but can't estimate how far away — it was about 10 feet (after a little prevarication) — points 14 feet". That parenthesis "(after a little prevarication)" shows clearly that the judge was observing the way in which the witness gave his evidence, and forming an opinion as to his credibility.

The motor-cyclist said that his motor-cycle was slightly inclined to the right. Later in his cross-examination he was questioned about his evidence given in proceedings before a magistrate, when he was charged with (in effect) careless driving. He was questioned about apparent discrepancies between his evidence to the magistrate and the evidence which he had been giving in the civil trial. There is this passage:

"Q. To magistrate you said you fell to the left side of the road?

A. I fell on the left side of my body on the crown of the road.

Q. You told magistrate you saw Tay Koh Yat bus about 10 feet behind you before you were hit but here you said you were hit when you saw it.

A. What I said then to magistrate is correct.

Q. You have not mentioned here you swerved to the left?

A. I was not asked. (Court did ask him and he denied swerving left).

My handlebar was slightly turned to the left as I looked behind turning head to right.

I had not started to move.

I was thrown forward about 6 feet."

A little later he said —

"I did not intend to turn the front handle to the left. It was involuntary."

The trial judge gave an oral judgment on 5th November 1969, the day after the trial. He said that he had gone through his notes in conjunction with the transcript of the notes of evidence given by the motor-cyclist before the magistrate in the other proceedings.

On 17th December 1969 he gave "grounds of decision", but he began them by saying —

"I annex herewith a transcript of a rough shorthand note taken down by my private secretary (slightly amended where indistinct) of my oral judgment herein to which I would like to add the following note."

Evidently the grounds of decision were not intended to supersede the oral judgment but only to add to it. In the course of his oral judgment he said:

"Now, the bus driver of the 2nd defendant company, who drove the Tay Koh Yat bus, gave evidence. I was watching him very carefully and it did seem to me at one stage that there probably was no lorry immediately in front of him, but it makes little difference whether there was or was not, because insofar as he is concerned, the lorry did not impede his view in any way as to whatever was on its offside. I accept his version that he could see to the right-hand side of the lorry and that he saw the motor-cyclist, the 3rd defendant, in the middle of the road.

From the evidence, I am quite satisfied that the bus driver was travelling along his correct side of the road. I am quite satisfied that, so far as he is concerned, even if he had in fact been travelling at a slightly higher speed than claimed by him, he cannot, in all the circumstances, really be blamed for the accident, having regard to the facts which I shall proceed to find with regard to the strange behaviour of the 3rd defendant motor-cyclist.

He is the man who was, as Mr. Wee put it, the *causa causans* of the whole accident. I observed him very carefully during the course of his evidence and the manner in which he gave it. I have also considered what he said before the magistrate. The record speaks for itself. I think his credit has been successfully attacked by counsel for the 2nd defendant. I am not satisfied that he has told me the whole truth. I find that he did swerve to his left across the path of the Tay Koh Yat bus driven by the 2nd defendant.

Having regard to the damage to the motor-cycle, the sketch plan showing the course taken by the Tay Koh Yat bus and to the final positions of the vehicles, I don't believe that he fell on the crown of the road as he said here. The motor-cycle swung round and faced the opposite direction after the Tay Koh Yat bus had caught it a glancing blow in its attempt to avoid him as he swerved to his left and he must have fallen only a few feet from the nearside of the road. He himself said before the magistrate that he fell towards the left-hand side of the road. That is most probably what happened. I therefore find that he is solely to blame for this accident."

The trial judge's grounds of decision were consistent with his oral judgment, and there are only certain passages which should be set out:

"I had no hesitation in substantially accepting the version given by the driver of the 2nd defendant in preference to that of the 3rd defendant who was a most evasive witness who continually shifted his ground. I did not believe the 3rd defendant at all on any disputed fact. This is far from saying that the driver of the 2nd defendant was a perfect witness in every way — he was clearly a little shaky on exact distances and speeds — as indeed most witnesses in these cases tend to be but he was a better witness than all the other motorists concerned in the case and I accepted him as a truthful witness as to the crucial issue in this case, *i.e.* whether the 3rd defendant swerved to his left across his path.

If the 3rd defendant had been stationary in the centre of the road giving a signal with his right hand as he claimed and if the 2nd defendant's bus had been travelling on its correct side at a distance of 5 or 6 feet from its nearside edge of the road there was nothing to prevent the 2nd defendant's driver from continuing his journey with absolute safety to all concerned unless that one or the other has been lying outrageously.

From the final position of the Tay Koh Yat bus it is clear that it must have been on its correct side before it swerved right....

All things considered, I found that the 3rd defendant was not stationary in the centre of the road when hit. If he had been, he would have been killed on the spot. I found that for reasons best known to himself or as a result of his inexperience he changed his mind about entering Leonie Hill Road to his right and swerved to his left across the path of the bus driver who had no alternative except to swerve to the right himself."

The judge gave judgment in the second action (the one that was heard) for the plaintiff against the motor-cyclist for $5,500 damages and costs, and ordered that the claim against the two bus companies (who were the other defendants) be dismissed with costs. He also ordered that the costs of the plaintiff and those of the two bus companies be paid by the motor-cyclist. A similar order was made in the first action.

The motor-cyclist appealed in both actions to the Federal Court of Malaysia. There was a memorandum of appeal, and there were at a later stage additional grounds of appeal and the record contains court notes of the argument before the Federal Court. None of these documents reveals any complaint on behalf of the motor-cyclist about the use which the trial judge had made of the transcript of the notes of evidence given by the motor-cyclist before the magistrate in the other proceedings.

The Federal Court set aside the judgment of the trial judge in the second action, and gave judgment for the plaintiff for $5,500 against the Tay company and ordered that the claim against the Hock Lee company and the motor-cyclist be dismissed. There was a similar judgment in the first action. Certain orders were made as to costs.

The reasons given by the Federal Court for reversing the decision of the trial judge were as follows:

"It must be borne in mind that this claim is by a passenger who was travelling in the Hock Lee bus and that the collision was between the two buses. It was the Tay Koh Yat bus that went to the wrong side of the road and collided into the Hock Lee bus. The onus, therefore, rests upon the third respondent to show that the Tay Koh Yat bus went to the wrong side of the road without any negligence on the part of their driver.

"The main question is, has the third respondent discharged that onus? In our view they have not.

The trial judge accepted the evidence of the driver of the bus and rejected the evidence of the motor-cyclist on the ground that if the motor-cyclist had remained stationary he would have been killed on the spot and also that he was a most evasive witness who continuously shifted his ground. The trial judge accordingly preferred the version given by the driver of the bus.

It is clear, therefore, that the trial judge did not base his preference for the version of the driver of the bus on demeanour and furthermore this court, as an appellate court, is under a duty to re-hear the case by examining the evidence and arriving at its own finding, but always bearing in mind it has neither seen nor heard the witnesses and paying due regard to the trial judge's finding and his reasons therefor. The fact that the motor-cyclist would have died on the spot had he remained stationary is a conclusion which, in our opinion, cannot be supported on the evidence before him. That conclusion seems to us to be a matter of pure conjecture. Again the conclusion of the trial judge that the motor-cyclist continuously shifted his ground in his evidence cannot be supported. He told a simple story from beginning to end namely that he remained stationary on the middle of the road waiting to turn right into Leonie Hill Road when he was hit by the bus and thrown clear to the left.

The question remains, which version is the more probable of the two? It is impossible to accept as true or possible the bus driver's evidence that travelling at a speed of between 15 to 20 m.p.h., his bus not more than 7 to 10 feet from the motor-cyclist, stationary on the middle of the road, that the motor-cyclist could swerve left suddenly and be across the path of his bus and that he could manage to, at the same time, swerve violently right and manage to strike a mere glancing blow on the motor-cycle."

The reasons of the Federal Court appear to their Lordships to be open to criticism at several points.

(a) It was surely a misapprehension to say that the trial judge's preference for the version of the driver of the Tay bus to the version of the motor-cyclist was not based on demeanour. The relevant passages of the trial judge's oral judgment and later reasons for decision have been set out above, and they speak for themselves. The judge said expressly that he was watching the bus driver very carefully and that he observed the motor-cyclist very carefully during the course of his evidence and the manner in which he gave it. He concluded that the bus driver was "a little shaky on exact speeds and distances", but accepted him as a truthful witness on the crucial issue as to whether the motor-cyclist swerved to his left across the path of the bus. The judge found the motor-cyclist to be a "most evasive witness who continually shifted his ground", and therefore the judge "did not believe him at all on any disputed fact". It seems to their Lordships that those findings were indisputedly based on demeanour, though no doubt the effect of the evidence generally was taken into account. When findings of primary fact by the trial judge have been based on his view as to the comparative credibility of opposing witnesses, and that view has been reached by observation of the witnesses as they gave their evidence, an appellate tribunal needs very strong grounds to justify a reversal of such findings. There are numerous authorities to that effect, and the Federal Court evidently had them in mind. It will be sufficient to cite a passage from Lord Sumner's opinion in the *Hontestroom case*,[1] which was cited and adopted by Lord Wright in *Powell and Wife* v. *Streatham Manor Nursing Home*[2] —

"Of course, there is jurisdiction to retry the case on the shorthand note, including in such retrial the appreciation of the relative values of the witnesses, for the appeal is made a rehearing by rules which have the force of statute: Order LVIII, r.1. It is not, however, a mere matter of discretion to remember and take account of this fact; it is a matter of justice and judicial obligation. None the less, not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and, unless it can be shown that he has failed to use or has palpably misused his advantage, the higher court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case."

(b) The question whether the motor-cyclist when giving his evidence was "a most evasive witness who continually shifted his ground" seems to their Lordships to be eminently a matter for decision by the trial judge who saw and heard the witness. The Federal Court did not even have a transcript of a shorthand note, but only court notes of evidence, which would naturally tend to record the sense of the answers eventually given rather than evasions on the way to them. There was, however, in a passage which has been set out above, the significant parenthesis "(after a little prevarication)". On the crucial issue in the case there was material for cross-examination in the discrepancy between the evidence given by the witness at the trial — that he remained stationary in the middle of the road, and did not swerve to the left, and fell forward on the crown of the road — and the evidence which he was recorded as having given in the previous proceedings before a magistrate — to the effect that he had swerved to the left in order to avoid a collision and that he fell to the left of the road. The judge had the opportunity of observing carefully the way in which the witness gave his answers at this critical point in his cross-examination, and there is no reason to suppose that the judge did not make use of this opportunity.

(c) As to the probabilities, their Lordships are of opinion that the probabilities are in favour of the bus driver's version. It seems quite clear that the bus driver was driving on his proper side of the road before he made his abrupt swerve. If the motor-cyclist had remained stationary in the middle of the road, all that the bus driver had to do was to continue on his course and there would have been no collision or emergency or problem. Why did the bus driver make his abrupt swerve to his offside into the territory of the oncoming traffic? There is no evidence or indication of the bus driver being inexperienced or incompetent, and one would not expect a person employed to drive a bus to be lacking in experience or competence in driving. The only explanation which the evidence affords for the action of the bus driver is that the motor-cyclist swerved to the left across the path of the bus. If that happened, it does explain the swerve by the bus driver: he was confronted with a sudden emergency, and in

what has sometimes been called "the agony of the moment" he swerved to the offside in order to avoid running down the motor-cyclist and probably injuring him fatally or very seriously. The trial judge was not wrong in accepting the evidence which afforded the only reasonable explanation of how the accident happened.

(d) A subsidiary point is that the position of the motor-cycle after the accident — close to the nearside and facing back in the direction from which it had come — is fully consistent with the assumption that the motor-cycle sustained the blow on the back wheel and back number-plate at a time when it was moving towards its nearside. That is the bus driver's version. The position of the motor-cycle after the accident is more difficult to reconcile with the motor-cyclist's version that the motor-cycle was, at the time when that blow was struck, stationary in the middle of the road, facing forwards, and slightly turned to the offside though with handlebars slightly turned to the nearside. There is no certainty but it seems likely that the motor-cycle if struck with that blow in that position would have been pushed forward in the centre of the road.

Their Lordships will accordingly allow the appeals in both actions, set aside the judgments of the Federal Court and restore the judgments of the trial judge.

The costs of the appellant, the Tay company, in the two appeals to the Federal Court and in the two present appeals must be paid by the respondent, the motor-cyclist. The sums which the Federal Court ordered to be paid by the appellant in respect of the costs incurred in the appeal to the Federal Court by the plaintiff and the first defendant in the second action must be paid by the respondent.

Appeals allowed

Solicitors: *Linklaters & Paines; Lipton & Jefferies*

SINGAPORE REPORTS

LEE CHOH PET & ORS. v. PUBLIC PROSECUTOR (No. 2)

[C.C.A. (Wee Chong Jin C.J., Chua and Choor Singh JJ.) March 2, 1972]

[Singapore — Criminal Appeal No. 11 of 1970]

Penal Code (Cap. 119, 1955 Ed.), ss. 34, 302, 364 and 386 — Common intention, murder, kidnapping for murder and extortion.

Criminal Law and Procedure — Charge — Extortion — What amounts to — Caution statements — Admissibility of — Judges' Rules — Compliance with — Criminal Procedure Code (Cap. 113, 1970 Ed.), s. 121(5), Sch. E.

Evidence — Corroboration — Accomplice evidence.

The three appellants were tried by a court of two judges constituted under section 185 of the Criminal Procedure Code. They were tried on three charges and were found guilty and sentenced to death on the charges of abduction for murder, and murder, in furtherance of their common intention. The prosecution failed to make out a case on the third charge of abduction for ransom. However, the trial court found that a *prima facie* case of extortion was made out against the appellants and they were convicted on this charge but the sentence on this charge was suspended.

This was an appeal against their convictions and sentences.

The evidence led by the prosecution was that on the evening of May 24, 1968 at about 7.00 p.m., the deceased was taken in a car from the Rex Theatre, Singapore, to a dark side lane off Clementi Road. The deceased was seated in the front seat of the car. Apart from the driver, there were three other persons in the back seat. The deceased was attacked from behind with a weapon or weapons by one or more of the persons in the back seat of the car. After some time, his body was dumped into a sewerage manhole in Jurong.

The deceased's abductors then commenced negotiations for the payment of $20,000 from the father of the deceased for the promised release of the deceased, the father being unaware that his son had already been killed. This payment was made on June 5, 1968.

The second and third appellants were subsequently arrested and they made caution statements regarding the parts they played in the whole transaction. Their caution statements were held to be admissible in evidence.

At the trial of the three appellants, the driver of the car, although an accomplice, gave evidence for the prosecution. He identified the three appellants as the persons who were sitting in the rear seat of the car. He described in detail the attack on the deceased and how the deceased resisted and tried to escape.

Held: (1) the evidence on record did not support the charge of extortion. The sum of $20,000 was paid by the deceased's father to the kidnappers not because he was put in fear of grievous hurt being caused to his son but because he believed that his son would be released upon payment of the said sum. The inducement was the promised release of his son and not fear of the causing of grievous hurt. Therefore, the charge of extortion was groundless and the conviction of the three appellants on this charge must be quashed;

(2) in the circumstances of this case, having regard to the character of the assault on the deceased, the preparations that had been made for the assault and for the subsequent disposal of the body of the deceased, the injuries received by the deceased and the fact that none of the appellants intervened to stop the assault, the trial judges were justified in coming to the conclusion that there was a common intention amongst the three appellants, first, to abduct the deceased in order that he may be murdered and secondly, that in furtherance of their common intention, they had committed murder by causing the death of the deceased;